IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 22ND NOVEMBER 2007 / 1ST AGRAHAYANA 1929

WP(C).No. 34505 of 2007(G)

AGAINST THE ORDER IN IA.489/2007 IN
OS.222/2005 of MUNI-MAGI.COURT,PONNANI

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PETITIONER:

PADUPUZHA VARIYATH
KUMMINI @ SREEDEVI VARASIAR BY MUKTHIAR AGENT
PADUPUZHA VARIYATH RUDRAN @ MOHANA VARRIAR
56 YEARS, THRIKKANAPURAM AMSOM, VELLANCHERY DESOM
IN PONNANI TALUK.

BY ADV. SRI.T.SETHUMADHAVAN
SRI.PUSHPARAJAN KODOTH
SRI.K.JAYESH MOHANKUMAR

RESPONDENT:

JAYAGOVINDAN
56 YEARS, S/O.KARAMBATHOOR BANUMATHY AMMA
THRIKKANAPURAM AMSOM, KADAKASSERI DESOM IN
PONNANI TALUK.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 22/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.Krishnan, J.

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W.P(C).No.34505 of 2007

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Dated this the 22nd day of November, 2007.

JUDGMENT

This Writ Petition is filed seeking to set aside the order in I.A.No.489 of 2007 in O.S.No.222 of 2005 of the Munsiff-Magistrate, Ponnani. Suit is one for a permanent injunction and there was an application for temporary injunction, which went against the plaintiff in the suit and a C.M.A. was preferred. It also ended in dismissal. Thereafter, a Writ Petition was filed and as per Ext.P3, I had observed that in the event of necessity, the plaintiff may be permitted to file an application for amendment of the plaint by converting the suit for recovery of possession on the strength of title.

2. Thereafter, an application for amendment has been filed. The court below rejected the amendment application mainly on the following reasoning; one that the plaintiff has not stated the date of trespass and secondly that it will change the character of the suit. It is true that there will be a change of character of the suit when a suit for injunction is converted into one recovery of possession. The Apex Court as well as this Court in very many decisions had held that in such a situation in order to avoid multiplicity of proceedings, courts are bound to allow the amendment applications liberty. So what is precisely prayed for

is a larger relief and therefore it may not be correct on the part of the court to reject it thereby driving the plaintiff to institute another suit for recovery of possession. It will not cause any prejudice to the defendant on account of some delay in filing the petition.

3. Therefore, the order under challenge suffers from serious infirmities and hence it is set aside. The application for amendment is allowed and the plaintiff is directed to amend the plaint in accordance with law and thereafter the defendant be given an opportunity to file additional written statement and the matter be disposed of in accordance with law.

Writ Petition is disposed of accordingly.

M.N.Krishnan,
Judge.

ess 23/11